

² The Board notes that, following the October 21, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ankle when he twisted his left foot walking on an uneven floor in the performance of duty.³ (He stopped work March 20, 2018 and returned to limited-duty work on May 6, 2018. OWCP assigned the claim File No. xxxxxx607 and accepted it for left ankle strain, strain of anterior tibiofibular ligament of the left ankle, subluxation of left peroneal tendon, aggravation of peroneal tubercle of left ankle, calcaneal spur of the left foot, and left ankle instability. It paid appellant wage-loss compensation on the supplemental rolls as of May 30, 2018 and on the periodic rolls as of March 29, 2020.

On November 30, 2018 appellant underwent OWCP-approved left ankle surgery, left lateral ankle ligamentous reconstruction, left peroneus brevis and longus tenolysis, and left calcaneal peroneal tubercle excision, which Dr. Kamran S. Hamid, an orthopedic foot and ankle surgery specialist, performed.

On May 9, 2019 Dr. Hamid released appellant to full-time sedentary work, with lifting no greater than 10 pounds. OWCP offered appellant a temporary limited-duty assignment on May 10, 2019, which appellant accepted.⁴

Prior to his return to work, appellant was seen by Dr. Kyle S. Peterson, a podiatrist, on May 14, 2019. He provided an impression of left peroneus longus tendon tear, stress fracture fifth metatarsal base, status post November 2018 open Brostrom/Gould, peroneal debridement and excision peroneal tubercle with continued pain. Dr. Peterson recommended that appellant remain off work, resume physical therapy, and undergo a revision left ankle surgery. An authorization request for surgical repair of left foot tendon was submitted.

In a May 18, 2019 letter, appellant formally requested that his treating physician be changed from Dr. Hamid to Dr. Peterson. He indicated that his light-duty assignment aggravated his left foot/ankle condition and that Dr. Hamid had refused to change his work status. Appellant also noted that Dr. Peterson had recommended a revision surgery as an appropriate treatment plan.

On May 30, 2019 OWCP informed appellant that it was unable to authorize a change of physician to Dr. Peterson. It noted that the evidence revealed that he was under the care of a qualified specialist and that his treatment appeared to have been appropriate. OWCP advised appellant that, he could arrange, at his own expense, an examination with a specialist who could provide a comprehensive report with a well-rationalized medical opinion, supported by objective findings, as to how the currently diagnosed condition was the result of appellant's March 15, 2018 employment injury and why he/she disagreed with the treatment provided by Dr. Hamid. It afforded appellant 30 days to submit such a narrative report. No additional evidence was received.

By decision dated July 2, 2019, OWCP denied appellant's request to change his treating physician.

On August 1, 2019 appellant, through counsel, requested reconsideration. OWCP continued to receive additional medical evidence.

³ The Board notes that appellant has a prior claim under OWCP File No. xxxxxx225 for a May 12, 2017 left foot injury.

⁴ Appellant formally accepted the limited-duty assignment on May 21, 2019.

On September 20, 2019 OWCP referred the case record, along with a September 20, 2019 statement of accepted facts (SOAF), to a district medical adviser (DMA) to determine the medical necessity of the requested surgery.

In an October 18, 2019 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as OWCP's DMA, reviewed the SOAF and the medical record. He opined that, while the proposed left ankle surgery was causally related to the accepted medical conditions, the requested surgery was not medically necessary.

By decision dated October 21, 2019, OWCP denied modification.

The Board has duly considered this matter and finds that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.⁵ In the instant case, appellant filed a traumatic injury claim for a left foot/ankle injury. The Board notes that appellant's prior claim under OWCP File No. xxxxxx225 also involves an alleged injury to the left foot/ankle. However, OWCP has not administratively combined the present claim with File No. xxxxxx225.

For a full and fair adjudication, the Board finds that this case must be remanded to OWCP to administratively combine the present claim with File No. xxxxxx225. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁶

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁶ *R.G.*, Docket No. 19-1755 (issued July 7, 2020); *L.M.*, Docket No. 19-1490 (issued January 29, 2020).

IT IS HEREBY ORDERED THAT the October 21, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 2, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board